



Signed and Filed: April 22, 2019

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Chapter 11
	)	
PG&E CORPORATION,	)	Bankruptcy Case
	)	No. 19-30088-DM (Lead Case)
and	)	
	)	
PACIFIC GAS AND ELECTRIC	)	Bankruptcy Case
COMPANY,	)	No. 19-30089-DM
	)	
Debtors.	)	(Jointly Administered)
	)	
<u>X Affects PG&amp;E Corporation</u>	)	Date: April 24, 2019
<input type="checkbox"/> Affects Pacific Gas and Electric Co.	)	Time: 9:30 a.m. (Pacific Time)
<input type="checkbox"/> Affects both Debtors	)	Place: United States Bankruptcy
	)	Court
* All papers shall be filed in	)	Courtroom 17, 16th Floor
Lead Case, No. 19-30088-DM.	)	San Francisco, CA 94102
	)	

ISSUES TO BE ADDRESSED AT THE APRIL 24  
HEARING ON RETENTION APPLICATIONS

The following are preliminary questions and concerns the court has regarding the forthcoming hearings on the applications by the Debtors and the two official committees to employ various professionals and others. At the hearings or any continued hearings the parties' counsel are encouraged to address these

1 concerns and any others that have been voiced by the United States  
2 Trustee or other parties in interest.

3  
4 **FOR ALL PROFESSIONALS:**

5 The orders approving any retentions should not include  
6 findings that any professional is "disinterested" or does not  
7 represent an adverse interest. The court relies on recitals or  
8 representations that a professional is "disinterested" and does not  
9 represent adverse interests to support the engagement and  
10 retention. If subsequent events imply or establish that any  
11 recitals or representations are or were not correct, the court will  
12 deal with any problems when and if necessary.

13 The retention orders will not approve any hourly rates or  
14 range of rates. They serve as notices by the respective applicants  
15 of their anticipated charges; the actual approvals will be in  
16 accordance with sections 330 and 331 of the bankruptcy code unless  
17 provided otherwise.

18 **FOR EPIQ:**

19 The retention application states that a competitive bidding  
20 process was conducted and that the rates are competitive and  
21 comparable, but with no particulars or authentication. More  
22 information is needed.

23 There is no anticipated budget indicating what the likely cost  
24 for these services will be throughout the engagement. More  
25 information is needed.

26 The application is not persuasive as to why EPIQ's services  
27 are even necessary beyond establishing and maintaining a website as  
28 described in the motion for clarification to be heard at the same  
time (#1215). Specifically, why does docket and claims information

1 that is already on the court's website and Prime Clerk's website  
2 need to be reproduced again? And what type of "required notices  
3 and pleadings" (Application, at 5:29) need to be prepared and  
4 served?

5 Why should the Debtors pay for errors by the Committee (See  
6 Services Agreement, § 3.5)?

7 Venue selection for dispute resolution other than in this  
8 court is not acceptable.

9 **FOR FTI** (in addition to questions raised by the UST):

10 Why isn't there an anticipated monthly budget for the coming  
11 months? Further, a separate budget is necessary for anticipated  
12 fees of FTI's own counsel.

13 The court is not inclined to depart from its usual practice of  
14 disapproving provisions granting indemnity for negligence. See  
15 comment re Lincoln Partners and DSI regarding indemnity.

16 The retention applications of FTI and Centerview overlap to  
17 some extent. While both include some clear lines of demarcation,  
18 there needs to be a more definitive indication why there will not  
19 be unnecessary duplication of effort.

20 Compensation under section 330 and 331 (as with Lincoln  
21 Partners and DSI for the TCC) rather than section 328 seems more  
22 appropriate for this engagement.

23 **FOR LINCOLN PARTNERS:**

24 Why isn't there an anticipated monthly budget for the coming  
25 months?

26 The court is not inclined to depart from its usual practice of  
27 disapproving provisions granting indemnity for negligence. The  
28 Committee's application states that it has negotiated  
indemnification provisions for Lincoln to be consistent with

1 provisions covering the Debtors' financial advisors (Application,  
2 at 8:12-14) but there is no reference to such comparable terms, nor  
3 does the court know which advisors are referred to in that  
4 statement. It is worth noting (with approval) that the application  
5 for employment of Development Specialists, Inc. (set for hearing on  
6 May 8, 2019), a second financial advisor for the TCC, contains no  
7 provisions for indemnity.

8 The court is not persuaded that the TCC needs two financial  
9 advisers, Lincoln and DSI. For that reason it intends to continue  
10 the Lincoln application to the May 8, 2019, calendar so the TCC  
11 will have an opportunity to explain in detail why two such advisers  
12 are necessary, particularly when the Official Committee of  
13 Unsecured Creditors is retaining yet a third financial adviser  
14 (FTI) and an investment banker (Centerview). While the court knows  
15 well the different interests and positions of the two committees,  
16 all of their respective constituents have a common interest in a  
17 successful and cost effective reorganization of the Debtors.  
18 Multiple layers of professionals analyzing the Debtors' financial  
19 conditions and affairs would not appear to advance those goals.  
20 **FOR CENTERVIEW** (in addition to questions raised by the UST and  
21 above re overlap with FTI):

22 The monthly retainer terms are unclear about the use of time  
23 records and application of hourly rates (See Application at 10-11).  
24 How will the court and parties in interest be able to assess the  
25 reasonableness of a monthly charge of \$250,000?

26 There are no guidelines or mileposts for the award of an  
27 Additional Fee in an unknown amount to be determined by the  
28 Committee and paid by the Debtors. More information is needed.

1 Reimbursement of expenses include fees of Centerview's own  
2 counsel with no budget, no described duties and no standards. More  
3 information is needed.

4 The court is not inclined to depart from its usual practice of  
5 disapproving provisions granting indemnity for negligence.

6 There needs to be clarification of Centerview's employment and  
7 compensation. Paragraph 5 of the proposed order authorizing  
8 employment directs that applications be filed in accordance with  
9 sections 330 and 331, yet not subject to review under section 330.  
10 Compensation is to be pursuant to section 328(a), but subject to  
11 limited review of fees only by the UST "for reasonableness." There  
12 is no provision for review by the court or other parties in  
13 interest. More information is needed.

14 Venue selection for dispute resolution other than in this  
15 court is not acceptable.

16  
17  
18 \* \* \* END OF ISSUES \* \* \*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28